

IN THE HIGH COURT OF JUDICATURE AT PATNA  
CR. WJC No.103 of 2000  
PREM PRAKASH  
Versus  
STATE OF BIHAR & ANR  
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6      28.7.2008

Heard the learned counsel for the petitioner and the respondents.

In the instant writ application the petitioner who is the daughter of the informant has prayed for quashing the F.I.R. of Pipra P.S.Case No.151 of 2006 dated 24.11.2006.

The informant Binod Kumar Srivastava alleged that his daughter Sabnam Kumari @Usha (aged 17 years) was a student of B.A. Ist Year in R.P.B.Devi College, Pipra, East Champaran.He further alleged that two persons, namely, Abinash Kumar who was her tutor, along with other miscreants kidnapped his daughter with motive of marriage or to commit such offence.

The learned counsel for the petitioner submits that she is above the permissible age limit of marriage . He submits that she had not been forcibly taken away or kidnapped by the F.I.R. accused, Abinash Kumar rather she had moved out with him on her free will and had married. In respect of the same the petitioner has filed an affidavit contained in Annexures- 2 and 3. He further submits that on the date of occurrence she was major and free to choose her own life partner. This has come in the aforesaid two documents that both of them were adult and they have married without any pressure or fear but with consent.

The learned counsel for the petitioner submits that in view of the aforesaid facts no offence under section 366 (A) of the I.P.C. is not

made out. Learned counsel in the midst of hearing also submits that the petitioner has a daughter also from the wedlock of the accused Abinash Kumar.

The learned counsel for the State submits that there is allegation in the F.I.R. that Abinsh Kumar forcibly took away the petitioner who was 17 years old. If a girl who has attained majority states that she has left her parents' house and gone with a boy and has married him, then the boy would not be held to have committed any offence under section 366A of the I.P.C. The views in this respect has been authoritatively pronounced in case of Lala Devi vrs. State of Bihar reported in 2006 (3) PLJR 327 SC and in case of Manorma Devi vs. State of Bihar reported in 2008 (1) PLJR 821.

The girl who is alleged to have been kidnapped states that she has not been kidnapped, rather she had gone out with accused Abinash Kumar on her own. The victim and accused claim to be above permissible age of marriage. If the aforesaid facts are correct, the accused persons cannot be said to have committed any offence much less under section 366(A) of the I.P.C. The main issue as such in this case is whether the girl and the boy are major and whether they have married on their own free will.

In this view of the matter this Court directs that the petitioner and Abinash Kumar both would appear before the I.O. and would put forth claim in respect of being major and of having married each other. The I.O. would complete the investigation in accordance with law in view of the guidelines provided in the aforesaid decisions. The petitioner as well as Abinash Kumar will put forth their case before the I.O. within five weeks

from today and till then no coercive steps will be taken against them.

With the aforesaid observation and direction this writ application is disposed of.

**AnilK.sinha**

**(Samarendra Pratap Singh,J.)**

